

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 23-M-0229 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, Proposed Amendment to Part 11 to Implement Public Service Law Section 53-a the Prohibition of Utilities Engaging in Detrimental Conduct Towards a Residential Customer.

NOTICE INVITING COMMENTS ON PROPOSED DRAFT RULEMAKING

(Issued May 30, 2023)

The Public Service Commission (PSC) is required by Public Service Law (PSL) §53-a to promulgate regulations to prohibit utility corporations, municipal utilities, and Energy Service Companies subject to PSC jurisdiction from engaging in any conduct, the natural consequence of which is to harass, oppress, or abuse any residential customer in connection with the handling of a complaint, the offering of a deferred payment agreement, or the collection of an unpaid bill. The amendment to PSL §53-a also provides that all service providers in violation of the statute shall be subject to fines, penalties and enforcement pursuant to PSL §§24, 25, 25-a, and 26. This revision would add a new subsection of the regulation entitled "Prohibition of utilities engaging in detrimental conduct towards a residential customer" in 16 NYCRR Part 11.33.

**PLEASE TAKE NOTICE** that public comments on the attached proposed draft regulations are invited and should be filed no later than August 14, 2023. Comments should refer to "Case 23-M-0229."

**Ways to Comment:**

**By Internet or Mail:** Please go to [www.dps.ny.gov](http://www.dps.ny.gov), click on " File Search" (located under the "Commission Filings" heading), enter "23-M-0229" in the "Search by Case Number" field, and then click on the "Post Comments" box located at the top of the page. Those unable to file electronically may mail their comments to the Honorable Michelle L. Phillips, Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York, 12223- 1350. All comments filed with the Secretary will be posted on the Department of Public Service's website and become part of the official case record.

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary

FULL TEXT OF THE RULE FOR 23-M-0229SP1

CHAPTER 1 RULES OF PROCEDURE  
SUBCHAPTER B, Procedures and Requirements Concerning Consumer  
Protections

PART 11  
HOME ENERGY FAIR PRACTICES ACT AND ENERGY CONSUMER PROTECTION  
ACT - RULES

NEW §11.33 Prohibition of utilities engaging in detrimental  
conduct towards a residential customer

16 NYCRR §11.33 Prohibition of utilities engaging in  
detrimental conduct towards a residential customer

(a) Definitions:

(1) Consumer reporting agency means any person which, for  
monetary fees, dues, or on a cooperative nonprofit basis,  
regularly engages in whole or in part in the practice of  
assembling or evaluating consumer credit information or  
other information on consumers for the purpose of  
furnishing consumer reports to third parties, and which  
uses any means or facility of intrastate or interstate  
commerce for the purpose of preparing or  
furnishing consumer reports.

(2) Deferred payment agreement or payment agreement (also  
referred to as the agreement in this section) means a  
written agreement for the payment of outstanding charges  
over a specific period of time, signed by both the utility  
and the applicant or customer and compliant with Article 2  
of the Public Service Law and section 11.10 of this Part.

(3) Detrimental conduct means any conduct by a utility,  
municipality, or ESCO, the natural consequence of which is  
to harass, oppress, or abuse a residential applicant or  
customer in connection with the establishment of gas and/or  
electric service, handling of a residential customer  
complaint, the offering or negotiating of a deferred  
payment agreement, the collection of an unpaid balance, or  
any other obligation owed by such customer.

(4) Residential customer complaint means a complaint, which  
may involve bills for service by regulated entities,  
deposit requests, negotiations for deferred payment  
agreements, service problems or other matters relating to  
utility service, filed with:

(i) the utility, municipality, or energy service company (ESCO) by a residential customer relating to their electric, gas, steam, telephone, or water service, or;

(ii) the department or commission when the residential customer believes they have not obtained a satisfactory resolution of a dispute with a utility, municipality, or ESCO regulated by the commission.

(5) *Unpaid balance or any other obligation owed* means the charges owed by a residential applicant or customer that are due and owing to their utility, municipality, or ESCO for utility service to such applicant or customer. The utility, municipality, or ESCO may assess late payment charges, taxes, and state mandated assessments to a residential customer's bill as otherwise provided by law or regulation.

(b) Harass, oppress, or abuse.

(1) *harass, oppress, or abuse* shall mean and include, but not be limited to, when the utility, municipality or ESCO knowingly fails or neglects to comply with the provisions of Article 2 of the Public Service Law. The following conduct shall be deemed a violation of this section:

(i) The use or threat of use of violence or other criminal means to harm physical persons, their reputation, or the property of any person.

(ii) The use of obscene or profane language or language, the natural consequence of which is to intimidate or otherwise insult or mistreat the listener or reader.

(iii) The publication of a list of customers who allegedly refuse to pay debts, except to a consumer reporting agency.

(iv) The advertisement for sale of any debt to coerce payment of the debt.

(v) Causing a telephone to ring or engaging any person in telephone conversation or other means of electronic communication repeatedly or continuously, the natural consequence of which is to annoy, abuse, or harass any person at the called number or point of electronic communication.

(vi) The placement of telephone calls or other means of electronic communication without meaningful disclosure of the purpose of the call or electronic communication and/or the identity of the utility, municipality, or ESCO.

(vii) The use of false, deceptive, or misleading representation in connection with the collection of a debt.

(2) the following conduct shall not be deemed harassment, oppression, or abuse by a utility, municipality or ESCO:

(i) Communications by an employee or agent of a utility, municipality, or ESCO in the regular course of business when collecting or attempting to collect any debt owed or due to the utility, municipality, or ESCO.

(ii) Communication to a residential customer upon their express consent to receive autodialed and prerecorded or automated calls or other means of electronic communication related to utility service. The customer consent to contact includes communications related to utility service and is limited to communications that warn or inform the customer about planned or unplanned service outages, updates about service outages or restoration, confirmation of service restoration or information about lack of service, notification of meter work or other field work, notification of possible eligibility for subsidized or lower cost services, or that relate to servicing and billing the customer's account.

(iii) Communications by an employee or agent of a utility, municipality, or ESCO when negotiating the terms and conditions of a deferred payment agreement consistent with Article 2 of the Public Service Law and section 11.10 of this Part.

(iv) Communications by an employee or agent of a utility, municipality, or ESCO when providing advice, information, or the position of that entity to a residential applicant or customer in relation to a complaint or the establishment of gas and/or electric service.

(c) No utility corporation, municipality, or ESCO subject to the department's uniform business practices and sections three hundred forty-nine and three hundred forty-nine-d of the general business law shall engage in any conduct the natural consequence of which is to harass, oppress, or abuse any residential applicant or customer in connection with the establishment of gas and/or electric service, handling of a residential customer complaint, the offering and/or

negotiating of a deferred payment agreement, or the collection of an unpaid balance or any other obligation owed by such customer.

(d) Investigation of complaints under these provisions shall be conducted through the Consumer Complaint Procedures set forth in Part 12 of this Title. The utility, municipality, or ESCO shall maintain records related to any complaint received pursuant to this section for a minimum of six years from the date of the complaint.

(e) Any utility, municipality, or ESCO found in violation of this section shall also be subject to fines, penalties, and enforcement pursuant to Public Service Law sections twenty-four, twenty-five, twenty-five-a, and twenty-six.